

FACTUAL HISTORY

On January 10, 2011 appellant, then a 51-year-old accounting technician, filed a traumatic injury claim alleging that on January 7, 2011 after a controversial e-mail discussion, she carried files on steps and injured her shoulders, back, and both knees. In a separate statement, she reported that, on that date, she was ordered to carry a box of files weighing 50 to 60 pounds up two flights of stairs.

In a January 21, 2011 note, Dr. Mark C. Leatherwood, a family practitioner, stated that, due to appellant's January 7, 2011 job injury, it was his recommendation that she be excused from work from January 24 through March 31, 2011.

In a February 15, 2011 memorandum, Dr. Scott E. Cherry, DO, MPH, CIME, and a Chief of Occupational Health Officer for the employing establishment, indicated that appellant reported to him that on January 10, 2011 she sustained a job injury, and that she wanted 45 days off for this injury. He stated that some time off may be appropriate depending on what her medical condition warranted. Dr. Cherry stated that appellant questioned whether he was a real physician. He informed her that she had a right to choose her own physician. The record also contains a January 10, 2011 light-duty status recommendation wherein Dr. Cherry placed appellant on desk duty and noted that she would follow up with her primary care physician.

By decision dated February 23, 2011, OWCP denied appellant's claim for compensation. It determined that she neglected to provide a comprehensive medical narrative report supporting that the work incident caused the claimed injury. OWCP noted that medical evidence must not only contain a diagnosis, but must establish that the diagnosed medical condition was causally related to the claimed injury.

On March 16, 2011 appellant requested review of the written record by an OWCP hearing representative.

In a March 8, 2011 report, Dr. Leatherwood stated that appellant had been his patient since March 2010 and that her injuries were sustained while carrying a 50- to 60-pound box up the stairs during her employment. He diagnosed knee pain and a sharp stabbing pain in her back as a result of carrying the box up the flight of stairs. Dr. Leatherwood noted that appellant had underlying osteoarthritis and that her medication alleviates the pain in her back and knees, but makes her quite drowsy. He requested an additional two-month extension off work.

An x-ray taken of the back on January 28, 2011 reflected no fracture or dislocation, no lytic or sclerotic lesions, no compression fracture or deformities and no scoliosis. Bilateral x-rays of the knees taken on the same date also reflected no fracture or dislocation, no lytic or sclerotic lesion, but marketed narrowing at the patellofemoral joints consistent with degenerative osteoarthritic changes.

In a decision dated June 16, 2011, an OWCP hearing representative affirmed the February 23, 2011 decision.

On July 18, 2011 appellant requested reconsideration.

In a July 15, 2011 report, Dr. Leatherwood noted that on January 18, 2011 appellant came to see him as a result of an injury she sustained during her federal employment when she was forced to carry a 50- to 60-pound box up a flight of stairs. He noted that her x-rays, which he had reviewed on the February 2, 2011 visit, showed osteoarthritis. Dr. Leatherwood opined that appellant has had osteoarthritis for many years and that, had she not been forced to carry the boxes up the stairs, she never would have had this exacerbation of acute pain related to her underlying condition of osteoarthritis. He opined that the diagnosis of chronic pain is directly related to the exacerbation of her underlying condition and, therefore, is the result of the incident that occurred while at work. Dr. Leatherwood noted that appellant was still in need of strong pain relievers to control her symptoms.

On October 20, 2011 OWCP accepted appellant's claim for temporary aggravation of bilateral knee osteoarthritis and temporary aggravation of lumbar spine osteoarthritis. However, on the same date, it denied her claim for continuation of pay as she had not provided sufficient medical evidence supporting that the employment injuries resulted in her incapacity to perform her duties as an accounting technician.

In an August 23, 2011 report, Dr. Leatherwood diagnosed severe back and knee pain with underlying osteoarthritis exacerbated by an episode at appellant's place of employment. He opined that the prognosis was unclear due to pending further evaluations. Dr. Leatherwood stated that appellant's pain inhibited her abilities to perform at work and her home life had been severely impacted. He stated that her diagnosis of osteoarthritis placed her in too great a risk of suffering further injury or harm by performing her duties at work until further treatment could be accomplished. Dr. Leatherwood reiterated that appellant took medication that caused drowsiness and would directly influenced her ability to function as an accounting technician.

An August 16, 2012 magnetic resonance imaging (MRI) scan of the lower extremities reflected chondromalacia in the medial femoral trochlea.

In a December 2, 2011 letter, Dr. Leatherwood contended that a senior claims examiner accepted appellant's claim for temporary aggravation of bilateral knee osteoarthritis and temporary aggravation of lumbar spine osteoarthritis, and that the nonsenior claims examiner concluded that there was no objective medical evidence to support disability due the accepted condition. He reiterated that, if appellant had not been forced to carry the boxes, she would not have incurred the accepted disability.

On January 25, 2012 OWCP denied appellant's claim for total disability compensation benefits from January 31 to October 27, 2011.

On January 22, 2013 appellant requested reconsideration based on new evidence from her treating, Board-certified psychiatrist and requested that her claim be accepted for the additional employment-related condition of adjustment disorder and that she be awarded compensation commencing January 31, 2011 as a result.

By decision dated March 4, 2013, OWCP denied modification of the January 25, 2012 decision. It determined that the evidence was insufficient to establish temporary total disability

for the time period January 31 to October 27, 2011. OWCP noted that appellant's psychiatrist had diagnosed appellant with adjustment disorder, which would be addressed separately.

On September 12, 2013 OWCP referred appellant to Dr. Joshua P. Herzog, a Board-certified orthopedic surgeon, for a second opinion regarding whether she continued to suffer from disabling residuals of her accepted condition. In addition, it asked that, if he found that one or more of the accepted employment-related conditions were active, to describe her limitations resulting from the employment-related disability. In a September 30, 2013 medical opinion, Dr. Herzog listed appellant's diagnoses as aggravation of bilateral osteoarthritis and aggravation of lumbar degenerative disc disease. He opined that she continued to suffer residuals from these conditions and provided a work capacity evaluation allowing appellant to work eight hours a day with limitations of no more than of four hours sitting, two hours walking, standing, and pushing/pulling lifting up to 10 pounds, and no twisting, bending, stooping, squatting, kneeling, and climbing.

In a November 1, 2011 attending physician's report, received by OWCP on August 22, 2013, Dr. Leatherwood diagnosed osteoarthritis, and reiterated that this was due to an employment activity as appellant has been required to carry heavy objects, and that she was disabled from March 1, 2010 through May 31, 2012.

In November 14, 2013 medical reports, Dr. Daniel A. Romanelli, a Board-certified orthopedic surgeon, noted that appellant had been referred to him by a Dr. Mark Beale.² He diagnosed preexisting degenerative arthritis, patellofemoral joint, particularly trochlear groove based on x-ray examination as well as MRI scan. Dr. Romanelli noted that appellant had preexisting flat feet and gait abnormality secondary to knee complaints. He opined that the work injury did not cause the arthritis in her knee. Dr. Romanelli further opined that perhaps going up and down stairs did cause some increased complaints of pain which typically would have resolved with conservative measures, and that he would not expect appellant to now be at the point where she needed a cane and a sleeve. He noted that an injection helped with the pain somewhat, but that she was not a candidate for surgery. Dr. Romanelli stated that at this point he had nothing more to offer appellant, and that she was stable and stationary at maximum medical improvement. He noted that she had no disability or impairment under the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Dr. Romanelli further noted that as appellant was retired, he would return her to full duty.

In response to OWCP's query, Dr. Herzog issued an addendum on March 26, 2014 wherein he stated that appellant has had constant bilateral knee pain since the date of injury and has radiographic evidence of marked narrowing of the patellofemoral joints consistent with arthritic changes, which is consistent with his examination findings. He noted that the aggravation appeared to be permanent since there was no significant functional improvement or reduction in pain since January 2011.

By decision dated April 22, 2014, OWCP denied modification of the March 4, 2013 decision finding that the new evidence did not support that appellant's psychological condition should be accepted as a consequential injury. Furthermore, it determined that the medical

² No further information was provided regarding Dr. Beale.

evidence of record still did not support that she suffered total disability due to the accepted work-related conditions for the period January 31 to October 27, 2011.³

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵ With respect to a claimed period of disability, an employee has the burden of establishing that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ The term disability is defined as the incapacity because of an employment injury to earn the wages the employee was receiving at the time of the injury, *i.e.*, a physical impairment resulting in loss of wage-earning capacity.⁷

Whether a particular injury causes an employee to be disabled for employment and the duration of that disability are medical issues which must be proved by a preponderance of the reliable, probative, and substantial medical evidence.⁸ The medical evidence required to establish a period of employment-related disability is rationalized medical evidence.⁹ Rationalized medical evidence is medical evidence based on a complete factual and medical background of the claimant, of reasonable medical certainty, with an opinion supported by medical rationale.¹⁰ The Board, however, will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed.¹¹ To do so, would essentially allow an employee to self-certify their disability and entitlement to compensation.¹²

³ OWCP also noted that in order to get a resolution on whether appellant's case should be upgraded to add adjustment disorder, the file would have to be referred for a second opinion, which is a separate matter and would be addressed separately.

⁴ 5 U.S.C. §§ 8101-8193.

⁵ *V.N.*, Docket No. 13-1909 (issued July 29, 2014).

⁶ *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ 20 C.F.R. § 10.5(f); *see e.g.*, *Cheryl L. Decavitch*, 50 ECAB 397 (1999) (where appellant had an injury, but no loss of wage-earning capacity).

⁸ *See Fereidoon Kharabi*, 52 ECAB 291 (2001); *see also T.A.*, Docket No. 14-1334 (issued October 27, 2014).

⁹ *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

¹⁰ *Leslie C. Moore*, 52 ECAB 132 (2000).

¹¹ *Sandra D. Pruitt*, 57 ECAB 126 (2005).

¹² *See William A. Archer*, 55 ECAB 674 (2004); *Feridon Kharabi*, *supra* note 8.

ANALYSIS

OWCP accepted that appellant carried a heavy box up stairs on January 7, 2011 as part of her federal employment. It also accepted her claim for temporary aggravation of bilateral knee osteoarthritis and temporary aggravation of lumbar spine osteoarthritis. However, OWCP denied appellant's claim for wage-loss compensation and continuation of pay. The Board finds that this case is not in posture for decision.

OWCP referred appellant for a second opinion evaluation with Dr. Herzog regarding, whether she continued to suffer from disabling residuals of her accepted temporary aggravation of bilateral knee osteoarthritis and temporary aggravation of lumbar spine osteoarthritis. Dr. Herzog opined that she continued to suffer residuals from her accepted employment condition, including bilateral knee pain, and radiographic evidence of marked narrowing of the patellofemoral joints and allowed her to work eight hours a day with limitations. However, he never addressed appellant's disability for the period commencing January 31, 2011.

The Board finds that this case is not in posture for decision. Proceedings before OWCP are not adversarial in nature and OWCP is not a disinterested arbiter; in a case where OWCP proceeds to develop the evidence and to procure medical evidence, it must do so in a fair and impartial manner.¹³ OWCP referred appellant to Dr. Herzog for a second opinion evaluation, but he was never asked whether she was disabled for the period of time commencing January 31, 2011 due to the temporary aggravation of her bilateral knee osteoarthritis and temporary aggravation of lumbar spine osteoarthritis. Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve all relevant issues in the case.¹⁴ The Board finds that OWCP is obligated to request a supplemental report from Dr. Herzog addressing disability as of January 31, 2011. After this and such other development as OWCP deems necessary, OWCP should issue a *de novo* decision.

The Board further notes that on appeal, appellant, through counsel, asks that the Board add a consequential injury for adjustment disorder. OWCP did not rule on the claimed psychiatric conditions. It determined that a second opinion was necessary and that this issue would be addressed separately. As this issue is currently interlocutory in nature, the Board lacks jurisdiction to review this matter.¹⁵

CONCLUSION

The Board finds that this case is not in posture for decision as OWCP must further develop the medical record.

¹³ *Walter A. Fundringer, Jr.*, 37 ECAB 200, 204 (1985); *see also J.G.*, Docket No. 14-1987 (issued January 21, 2015).

¹⁴ *Richard F. Williams*, 55 ECAB 343, 346 (2004).

¹⁵ *See* 20 C.F.R. § 501.2(c)(2) (there will be no appeal with respect to any interlocutory matter decided or not decided) by OWCP during the pendency of the case.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 22, 2014 is set aside, and the case is remanded for further action consistent with this opinion.

Issued: August 12, 2015
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board